

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs May 14, 2007

**JAMES E. MOSES v. TENNESSEE BOARD OF PROBATION AND  
PAROLE**

**Appeal from the Circuit Court for Davidson County  
No. 05C-233     Hamilton Gayden, Judge**

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**No. M2005-00859-COA-R3-CV - Filed July 18, 2007**

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Inmate appeals the dismissal of his Petition for a Common Law Writ of Certiorari after being denied parole. The trial court found that the inmate had failed to comply with the statutory requirements applicable to inmates filing civil actions in forma pauperis. Finding that Mr. Moses failed to file the requisite affidavit pursuant to Tenn. Code Ann. § 41-21-805 and failed to pay the requisite partial filing fee, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court  
Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

James E. Moses, Whiteville, Tennessee, Pro Se.

Robert E. Cooper, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Jennifer R. Bailey, Assistant Attorney General, for the appellee, Tennessee Board of Probation and Parole.

**MEMORANDUM OPINION <sup>1</sup>**

James Emmitt Moses is an inmate in the custody of the Tennessee Department of Correction at Whiteville Correctional Facility in Whiteville, Tennessee. Mr. Moses is serving a twenty-six year sentence for Schedule II drug possession, aggravated burglary, and robbery. In August 2004, Mr.

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<sup>1</sup> Tenn. Ct. App. R. 10 provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Moses appeared before the Tennessee Board of Probation and Parole, which declined to release him on supervised parole. After exhausting his administrative appeals, Mr. Moses filed a petition for a common-law writ of certiorari in the Circuit Court for Davidson County on January 24, 2005, alleging that the Board denied him parole on account of his race.

On February 3, 2005, the trial court entered an Order stating that Mr. Moses had failed to file the requisite pauper's oath, failed to file an affidavit with the information required by Tenn. Code Ann. § 41-21-805, and had failed to pay the partial filing fee required by Tenn. Code Ann. § 41-21-807. The trial court gave Mr. Moses twenty days to comply with the statutory requirements or risk his action being dismissed. Thereafter, Mr. Moses filed an affidavit of indigency, but as of March 1, 2005, he had yet to file the Tenn. Code Ann. § 41-21-805 affidavit or the partial filing fee. Accordingly, the trial court dismissed Mr. Moses' case, from which dismissal Mr. Moses appeals.

Mr. Moses contends he complied with the statutory requirements, but our review of the entire record reveals that the only document he filed in addition to his Petition for Common Law Writ of Certiorari was a Uniform Civil Affidavit of Indigency and a copy of a statement from his trust fund account. The trial court identified the flaws in Mr. Moses' filings by its order on February 3, 2005. The trial court's February 3 Order indicated that it would only give Mr. Moses twenty days to comply, but the court actually gave Mr. Moses until March 1 before dismissing his Petition.

Tenn. Code Ann. § 41-21-805 requires the filing of an affidavit containing information about any past lawsuits that an inmate may have filed, and Tenn. Code Ann. § 41-21-807 requires that inmates file a partial payment toward the total filing fee. The record before us fails to establish that Mr. Moses complied with the statutory requirements. We, therefore, affirm the trial court's dismissal of Mr. Moses' Petition.

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against James Emmitt Moses for which execution may issue.

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FRANK G. CLEMENT, JR., JUDGE<sup>2</sup>

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<sup>2</sup>This matter was assigned to the authoring judge in July of 2007.